

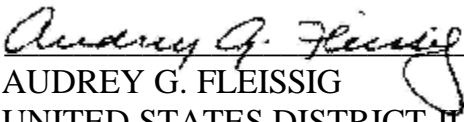
JOANN GABBERT,)
)
Plaintiff,)
)
vs.) Case No. 4:10CV02441 AGF
)
MICHAEL J. ASTRUE,)
Commissioner of Social Security)
Administration,)
)
Defendant.)

This matter is before me for judicial review under 42 U.S.C. § 405(g). Plaintiff Joann Gabbert is appealing a final decision of the Social Security Administration denying her application for disability insurance and supplemental security income under Titles II and XVI of the Social Security Act. Defendant has submitted a motion to reverse and remand this action. (Doc. 14.) Defendant requests that the Court both enter final judgment in accordance with Fed. R. Civ. P. 58 reversing the decision of the Administrative Law Judge (“ALJ”) and remand this case to the Commissioner of Social Security for further proceedings. Defendant represents that when the Appeals Council receives the remand order, it will “direct the ALJ to further evaluate Plaintiff’s FEV₁ test results and determine whether she meets listing 3.02A.” Plaintiff has no objection to this motion. (Doc. 15.) After careful consideration, the Court will grant this motion and remand this action for further proceedings.

Sentence four of 42 U.S.C. § 405(g) states that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” However, in order for the Court to properly remand a case to the Commissioner pursuant to sentence four, the Court must enter an order either affirming, modifying, or reversing the Commissioner's decision. *See Brown v. Barnhart*, 282 F.3d 580, 581 (8th Cir. 2002).

Accordingly,

IT IS HEREBY ORDERED that Defendant’s Motion to Remand [#14] is **GRANTED** and the decision of the Commissioner is reversed and remanded for further proceedings consistent with Defendant’s motion to remand. A separate judgment in accordance with this Order is entered this same date.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 6th day of June, 2011.